

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

MARIO & CARMEN MELARA,  
Respondents

Case No.: I-00-20329

---

**FINAL ORDER**

**I. Introduction**

On January 3, 2002, the Government served a Notice of Infraction upon Respondents Mario and Carmen Melara alleging that they violated 21 DCMR 708.10 by storing solid wastes solely in plastic bags intended for use as container liners. The Notice of Infraction alleged that the violation occurred on January 2, 2002 at 727 Morton Street, N.W., and sought a fine of \$50.

Respondents filed a timely answer with a plea of Admit with Explanation. On February 5, 2002, I issued an order permitting the Government to respond within 14 days. The Government has elected not to file any response.

**II. Summary of the Evidence**

Respondents assert that they received the Notice of Infraction “for trash that was just laying all over our parking entrance in the alley,” including various forms of construction debris and furniture items deposited there by trespassers. They state that they only put their trash out

early in the morning on collection days, and that January 2, the date of the violation, was not a collection day. They argue, therefore, that the offending trash was placed there by others.

### **III. Findings of Fact**

Respondents own property located at 727 Morton Street, N.W. Their plea of Admit with Explanation establishes that plastic bags intended for use as liners only were used to store solid wastes on their property on January 2, 2002. Respondents have accepted responsibility for the violations and there is no evidence in the record that they have a history of prior violations.

### **IV. Conclusions of Law**

The regulation at issue provides:

Plastic bags intended for use as container liners are prohibited for use alone for storing solid waste refuse, except that plastic bags of at least nine (9) mil. thickness with a capacity of no more than thirty-two (32) gallons and securely tied may be used as containers for yard rubbish, provided that bags used for this purpose are marked as yard rubbish and set out for collection on the day(s) designated for yard rubbish collection.

21 DCMR 708.10.

Respondents' plea of Admit with Explanation establishes that they violated § 708.10 on January 2, 2002. Violation of § 708.10 is a Class 4 civil infraction, punishable by a fine of \$50 for a first offense. 16 DCMR 3216.4(e); 16 DCMR 3201.1(d). Disposal of the offending trash by others does not excuse the violation. "The law recognizes that a property owner, or other person in control of the property, is in a position to undertake reasonable precautions to ensure compliance with public health and environmental measures such as [§708.10]. Accordingly, the law imposes strict liability on the property owner for violations." *DOH v. Belay*, OAH No. I-02-72237 at 4 (Final Order, October 3, 2002), citing *Bruno v. District of Columbia Board of Appeals*

*and Review*, 665 A.2d 202 (D.C. 1995). *See also DOH v. Fleming*, OAH No. I-02-72423 at 2 (Final Order, November 18, 2002). Respondents' acceptance of responsibility and their lack of a history of violations warrant a reduction in the fine amount, however, and I will impose a fine of \$30.

## **V. Order**

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2003:

**ORDERED**, that Respondents, who are jointly and severally liable, shall pay a total of **THIRTY DOLLARS (\$30)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondents fail to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents

pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**/s/ 02/20/03**

---

John P. Dean  
Administrative Judge